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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,020	11/14/2003	Marni Lynn Hurwitz	0200-4	8389
25901	7590	01/10/2006		
ERNEST D. BUFF			EXAMINER	
ERNEST D. BUFF AND ASSOCIATES, LLC.			LEWIS, KIM M	
231 SOMERVILLE ROAD				
BEDMINSTER, NJ 07921			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/712,020	HURWITZ, MARNI LYNN
	Examiner Kim M. Lewis	Art Unit 3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 September 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-3 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    Paper No(s)/Mail Date. \_\_\_\_\_.  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.                    5) Notice of Informal Patent Application (PTO-152)  
 6) Other: Detailed Action.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 9/8/05 has been received and made of record. As requested the abstract and claim have been amended.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. More specifically, applicant's original specification does not provide support for the term permanently. The specification recites that the cold pack can be "attached" or "integrally attached" to the bandage support member.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1 and 3 remain rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,431,622 ("Pyrozyk et al.") in view of U.S. Patent No. 3,643,665 ("Caillouette").

As regards claims 1 and 3, Pyrozyk et al. substantially disclose all features of the claimed invention. More specifically, Pyrozyk et al. disclose a thermal bandage providing a cooling effect (note that thermal pack 36 can provide hot or cold) that inherently has first and second ends, first and second bandage supports (38, 40), first and second a skin-adhesive portions (constituted by adhesive portions 42 and 44) for affixing the bandage to the body of a user; and a portion (constituted by fluid absorbent member 46) adapted for contact with the area of the body to be covered by said bandage.

Pyrozyk et al. fail to teach that the thermal pack comprises at least one chemical agent and at least one solution collectively disposed within a thermal pack, which, when mixed, undergo an endothermic reaction; means for separating said agent and said solution within at least one chamber within a body of said bandage, at least one portion

of said separating means being easily broken or ruptured so that said agent and said solution may be mixed, that the separating means includes one of a frangible, tearable or puncturable member, that said chemical agent is provided in dry solid or concentrated solution form, said solution is water, and that the fluid absorbent member is sterile.

However, Caillouette teaches that well known flexible thermal packs comprise a least one chemical agent and at least one solution, which, when mixed, undergo an endothermic reaction, means for separating said agent and said solution within at least one chamber within a body of said bandage and at least one portion of said separating means being easily broken or ruptured so that said agent and said solution may be mixed, that the separating means includes one of a frangible, tearable or puncturable member, that said chemical agent is provided in dry solid or concentrated solution form, said solution is water (col. 1, line 74-col. 2, lines 10).

It would have been an obvious design choice to one having ordinary skill in the art to modify the thermal dressing of Pyrozyk et al. substituting its thermal pack for the thermal pack of Caillouette since the applicant has not stated that the disclosed thermal pack of the instant invention solves a particular problem.

Pyrozyk et al. also fail to teach that the bandage support members are permanently attached to the thermal pack. Instead, Pyrozyk et al. disclose a pocket having a closable flap for maintaining the thermal pack within the bandage. However, the examiner contends that one having ordinary skill in the art would have found it

obvious to permanently secure the flap by use of glue or stitching, in order to ensure that the thermal pack will not come out of the pocket.

As to the sterility of the absorbent member, it would have been *prima facie* obvious to one having ordinary skill in the art at the time of invention to provide the bandage of Pyrozyk et al. with a sterile absorbent pad since the bandage, hence the absorbent member, can be placed on an open wound (note the abstract).

As to the leak proof recitation, it would have been obvious one having ordinary skill in the art to provide both the thermal pack (36) of Pyrozyk et al. and the thermal pack of Caillouette with leak proof containers in order to prevent the thermal ingredients from leaking out the container.

7. Claim 2 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Pyrozyk et al. in view of Caillouette as applied to claim 1 above, and in further view of U.S. Patent No. 3,900,027 ("Keedwell").

As regards claim 2, the modified device of Pyrozyk et al. fails to disclose that the absorbent portion may be associated with at least one of an antibiotic, an anesthetic, an antipyretic, and a burn medicament.

Keedwell, however, discloses an absorbent pad having thereon an antibiotic (col. 4, lines 19-22) for the inherent purpose of applying therapy to a user. In view of Keedwell, it would have been obvious to one having ordinary skill in the art to provide the modified device of Pyrozyk et al. with an antibiotic on the absorbent pad in order to apply therapy to a user.

***Response to Amendment***

***Response to Arguments***

8. Applicant's arguments filed 9/8/05 have been fully considered but they are not persuasive. In summary, Applicant's primary argument is that Pyrozyk et al. in view of Caillouette does not teach or suggest each element of claims 1 and 3 as amended, can consequently does not teach the features of claim 2, since claim 2 depends from claim 1. Applicant first asserts that the invention of Pyrozyk et al. do not include a thermal pack and that the combined references do not teach or suggest a flexible and leak proof cold pack container and first and second bandage support members permanently attached to the cold pack container.

In response, the examiner disagrees. Applicant's attention is directed to thermal pack (36) of Pyrozyk et al. Also, note the thermal pack of Caillouette must be leak proof in order to prevent the solution and other chemical agents from leaking from the container. Further, since the thermal pack of Caillouette it is compressed/squeezed in order to allow the agent and solution to mix, it must be flexible. The examiner contends that the only subject matter, which could be questioned as not being taught by the combined references of Pyrozyk et al. and Caillouette is that thermal pack of Caillouette is permanently attached to the bandage support portions. However, the examiner contends that once the thermal pack is placed in the pocket, one having ordinary skill in

the art would find it obvious to permanently secure the flap to the pocket to ensure that the thermal pack is not removed from the pocket.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

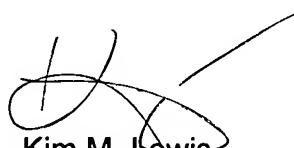
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Monday to Thursday from 5:30 am to 12:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (571) 272-4791. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kim M. Lewis  
Primary Examiner  
Art Unit 3743

kml  
January 6, 2006